

JAN 30 2006

**EMPLOYER STATUS DETERMINATION**  
**BG & CM Railroad**  
**North Idaho & Pacific Railway, Inc.**

This is the determination of the Railroad Retirement Board concerning the status of BG & CM Railroad (BG) and North Idaho & Pacific Railway, Inc. (North Idaho), as employers under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.).

Information regarding both companies was provided by Stan Patterson, Operations Manager of BG and President of North Idaho. According to Mr. Patterson, BG is owned by Michael Williams and began railroad operations June 23, 2005. BG has no employees and contracts with North Idaho for operation of the railroad. Mr. Patterson is the sole employee of North Idaho. He runs the train and provides management support for BG. BG and North Idaho entered into an agreement last dated September 18, 2005, for North Idaho to provide a train crew consisting of a "qualified Conductor and/or FRA qualified Locomotive Engineer" for BG.

In Surface Transportation Board Finance Docket No. 34713, decided June 28, 2005, BG filed a notice of exemption to acquire and operate a number of rail lines in Nez Perce, Clearwater, and Lewis Counties, Idaho, formerly owned by Great Northwest Railroad, Inc. (a covered employer under the Acts; B.A. No. 2666). BG interchanges with Great Northwest Railroad.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

(i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;

(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad \* \* \*.

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The fact that an entity has sought and obtained STB authority to operate a rail line is evidence that it is subject to STB's statutory jurisdiction over railroad transportation. In addition, despite the fact that a particular entity may contract with another company to operate its rail line, the entity which has been certified by the STB to operate the line has a continuing obligation to furnish rail transportation over the line until such time as the STB issues authority permitting the cessation of rail transportation over that line. In STB Finance Docket No. 34713, BG obtained the authority from the Surface Transportation Board both to acquire and operate the rail line in question. Even though railroad operations are currently being performed by North Idaho, BG has the ultimate responsibility either to see to it that railroad operations continue or to obtain authority to discontinue such operations.

The Board notes that in its decision regarding Railroad Ventures, Inc. (B.C.D. 00-47), the Board held that an entity that has STB authority to operate a rail line, but leases or contracts with another to operate the line in question, is covered under the Acts administered by the Board unless the Board determines that the entity is not a carrier. The Board enunciated a three-part test in B.C.D. No. 00-47 to be applied in making this determination. An entity that leases a line to another company or contracts with another company to operate the line, is a carrier under the Railroad Retirement Act unless the Board finds that all three of the following factors exist: 1) the entity does not have as a primary business purpose to profit from railroad activities; 2) the entity does not operate or retain the capacity to operate the rail line; and 3) the operator of the rail line is already covered or would be found to be covered under the Acts administered by the Board. BG certified to the STB that its projected revenues would not exceed those that would qualify it as a Class III rail carrier and that its revenues were not projected to exceed \$5 million. The Board thus finds that BG is an enterprise which is intended to profit from railroad activities.

The Board therefore finds that BG became a rail carrier employer under section 1(a)(1)(i) of the Railroad Retirement Act and the corresponding sections of the Railroad Unemployment Insurance Act beginning June 23, 2005, the date as of which it commenced operations.

In regard to North Idaho, that company is operating the railroad owned by BG, pursuant to the above-mentioned contract between North Idaho and BG. Accordingly, North Idaho is also an employer under the Acts effective June 23, 2005.

Original signed by:

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Kever